

1757 MES
CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS Board of Trustees of the Clerks and Lumber Handlers Pension Fund	DEFENDANTS Piedmont Lumber & Mill Company, a California corporation
(b) County of Residence of First Listed Plaintiff San Francisco (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant Alameda (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Trucker Huss 100 Montgomery Street, 23rd Floor San Francisco, CA 94104 (415) 788-3111	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)												
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table border="0" style="width: 100%;"> <tr> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> <th style="text-align: left;">PTF</th> <th style="text-align: left;">DEF</th> </tr> <tr> <td>Citizen of This State <input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State <input type="checkbox"/> 1</td> <td>Citizen of Another State <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3</td> <td>Foreign Nation <input type="checkbox"/> 3</td> <td></td> <td></td> </tr> </table>	PTF	DEF	PTF	DEF	Citizen of This State <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 1	Citizen of Another State <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 2	Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 3		
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	TORTS <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td style="vertical-align: top;"> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> </tr> </table>	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
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			SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609		
			OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes		

V. ORIGIN (Place an "X" in One Box Only)	Transferred from
<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 another district (specify) <input type="checkbox"/> 6 Multidistrict Litigation <input type="checkbox"/> 7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Section 502 and 515 of the Employee Retirement Income Security Act of 1979 Brief description of cause: Delinquent Pension Fund contributions pursuant to Collective Bargaining Agreement.
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/> DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".
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IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)	<input checked="" type="checkbox"/> SAN FRANCISCO/OAKLAND <input type="checkbox"/> SAN JOSE <input type="checkbox"/> EUREKA
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DATE April 23, 2010
 SIGNATURE OF ATTORNEY OF RECORD *Michael S. Chiles*

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Attorneys for Plaintiffs Board of Trustees
of the Clerks and Lumber Handlers Pension
Fund

E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE CLERKS
AND LUMBER HANDLERS PENSION
FUND,

Plaintiffs,

vs.

PIEDMONT LUMBER & MILL COMPANY,
INC.

Defendant.

Case No.

CV 10 1757

COMPLAINT FOR VIOLATION OF
ERISA

FILED

2010 APR 23 A 11:00

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MEJ

Plaintiff Board of Trustees of the Clerks and Lumber Handlers Pension Fund (the "Board") alleges for its complaint against Defendant Piedmont Lumber & Mill Company, Inc. ("Piedmont Lumber"), as follows:

JURISDICTION AND VENUE

1. This case arises under Section 302 of the Labor Management Relations Act, as amended ("LMRA"), 29 U.S.C. § 186, and Sections 502 and 515 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132 and 1145. This Court has jurisdiction of actions brought under these statutes pursuant to 28 U.S.C. § 1331 and ERISA § 502(e), 29 U.S.C. § 1132(e).

2. Venue is proper in this district and division as the employee benefits plan relevant to this case, the Clerks and Lumber Handlers Pension Plan (the "Plan"), is administered in this

1 judicial district and payment of contributions to the Clerks and Lumber Handlers Pension Fund (the
2 “Pension Fund”) is also made within this judicial district. Venue is further proper as the Defendant
3 Piedmont Lumber resides and does business within this judicial district as well.

4 INTRADISTRICT ASSIGNMENT

5 3. Assignment within this judicial district to the San Francisco and Oakland Division is
6 proper under Civil Local Rule 3-2 of this Court because the Plan is administered in Alameda
7 County and payment of contributions and premiums is also made to the Plan’s administrative
8 offices in Alameda County.

9 PARTIES

10 4. Plaintiff is, and at all relevant times was, the plan administrator and plan sponsor for
11 the Plan. Plaintiff brings this action as a fiduciary for the Plan. The Plan is, and at all relevant
12 times was, a multiemployer plan and employee benefit plan within the meaning of ERISA § 3(2),
13 3(3), and 3(37), 29 U.S.C. § 1102(1) or 1102(2), 1102(3), and 1102(37). The Plan is governed by
14 ERISA.

15 5. Upon information and belief, Defendant Piedmont Lumber is a corporation that has
16 its principal place of business in the state of California, and is, and at all relevant times was, an
17 employer that participates in the Plan. Piedmont Lumber is a participating employer under the
18 Trust Agreement of the Clerks and Lumber Handlers Pension Fund (the “Trust Agreement”).

19 BACKGROUND ALLEGATIONS

20 6. Defendant Piedmont Lumber, which is one of several employers that are part of the
21 Lumber and Mill Employers Association, entered into a collective bargaining agreement with the
22 Clerks and Lumber Handlers Local 886, which was effective July 1, 1996, as amended (the
23 “CBA”).

24 7. The CBA obligates Piedmont Lumber to, among other things, pay to the Pension
25 Fund a set rate for every hour worked by its employees, which is referred to as the “Required
26 Contribution Rate.” In 2009, the Required Contribution Rate was thirty cents (\$.30) for every hour
27 worked by its employees. In 2010, the Required Contribution Rate increased to forty cents (\$.40)
28 for every hour worked.

1 8. The CBA binds Piedmont Lumber to the provisions of the Trust Agreement.

2 9. Under Article III, Section 1 of the Trust Agreement, participating employers are
3 required to make contributions to the Pension Fund on or before the tenth (10th) day of each
4 month.

5 10. Pursuant to Article III, Section 1 of the Trust Agreement, participating employers
6 are required to submit contributions covering the hours worked by its employees during the prior
7 month computed at the Required Contribution Rate set forth in the CBA and to submit to the
8 Pension Fund a report of hours worked by its employees for that month.

9 11. Under Article III, Section 1 of the Trust Agreement, contributions are considered
10 delinquent if due but unpaid after the tenth (10th) day of the month in which the contribution to the
11 Pension Fund is payable.

12 12. Article III, Section 2 of the Trust Agreement provides that (1) interest on the unpaid
13 contributions at the rate of twelve percent (12%) per annum from the tenth (10th) day of the month
14 in which the contribution became delinquent until the date the contributions are paid to the Pension
15 Fund, and (2) an amount equal to the greater of (a) an amount equal to the interest payable pursuant
16 to (1) herein, or (b) liquidated damages in an amount equal to twenty percent (20%) of the unpaid
17 contributions, are payable to the Pension Fund if a participating employer fails to make the
18 contributions due to the Pension Fund on or before the tenth (10th) day of the month in which they
19 are due.

20 13. Under Article III, Section 2 of the Trust Agreement, a participating employer
21 becomes liable for attorney's fees incurred by the Pension Fund in connection with a participating
22 employer's delinquency regardless of whether legal or arbitration proceedings are instituted, plus
23 court costs if any. The participating employer is also liable for any audit fees incurred by the
24 Pension Fund in connection with the participating employer's delinquency.

25 14. ERISA § 515 obligates participating employers under the CBA and Trust
26 Agreement "to make contributions to a multiemployer plan under the terms of the plan or under the
27 terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make
28

1 such contributions in accordance with the terms and conditions of such plan or such agreement.”
2 29 U.S.C. § 1145.

3 15. The Board also maintains Contribution and Delinquency Rules and Procedures
4 (“Delinquency Procedures”) for the Plan that are provided to all participating employers.

5 16. The Delinquency Procedures reiterate the delinquency provisions provided for in the
6 CBA and Trust Agreement.

7 17. The Pension Fund administrator provided a copy of the Delinquency Procedures to
8 Defendant.

9 18. Defendant has violated ERISA and the terms of the CBA, the Trust Agreement and
10 Delinquency Procedures by failing to make contributions to the Pension Fund from November
11 2009 through March 2010, and to pay interest and liquidated damages on all delinquent
12 contributions to the Pension Fund from September 2009 through March 2010 as required by under
13 the CBA and the Trust Agreement.

14 19. Based on the monthly reports of hours worked by Defendant’s employees each
15 month, Defendant currently owes the Pension Fund the following:

16 a. Approximately \$27,068.65 in past due contributions for November 2009
17 through March 2010;

18 b. Approximately \$1,157.99 in interest calculated based on an interest rate of
19 twelve percent (12%) from the delinquency date through April 16, 2010 on all past due
20 contributions from September 2009 through March 2010;

21 c. All interest that has accrued since April 16, 2010 until the past due
22 contribution amount is paid to the Pension Fund;

23 d. Approximately \$7,332.43 in liquidated damages calculated based on a
24 liquidated damages rate of twenty percent (20%) from the delinquency date through April 16, 2010
25 on all past due contributions from September 2009 through March 2010;

26 e. All liquidated damages that have accrued since April 16, 2010 until the past
27 due contribution amount is paid to the Pension Fund; and

28 f. Attorney’s fees and court costs.

20. Upon information and belief, the Board alleges that all employees of Piedmont Lumber ceased performing work covered under the CBA for which Defendant owes contributions to the Pension Fund sometime in March 2010. However, in the event that there are employees of Piedmont Lumber who continued to perform work covered under the CBA after March 2010, Defendant has an ongoing obligation to contribute to the Pension Fund and is responsible for all future contributions owed to the Pension Fund pursuant to the terms of the Trust Agreement and the CBA.

CLAIM FOR RELIEF

(Violation of ERISA)

21. Plaintiff realleges, as though set forth fully herein, each and every allegation contained in the foregoing paragraphs.

22. Piedmont Lumber must comply with § 515 of ERISA, which provides that “[e]very employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.” 29 U.S.C. § 1145.

23. As set forth above, Piedmont Lumber breached its obligations to make contributions, and in so doing, violated the CBA, the Trust Agreement, and the provisions of § 515 of ERISA, 29 U.S.C. § 1145.

24. ERISA requires Piedmont Lumber to pay the contributions due under the CBA and Trust Agreement and further obligates Piedmont Lumber to pay interest on the overdue amounts, liquidated damages, and the Plan’s attorney’s fees and costs.

25. The Board is further entitled to equitable relief under ERISA in the form of an order compelling Piedmont Lumber to perform and to continue performing its obligations under the Trust Agreement and the CBA.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

A. For compensation for delinquent Pension Fund contributions, totaling \$27,068.65, covering and concerning hours worked by Piedmont Lumber’s employees in November 2009

1 through March 2010, and for any other delinquent Pension Fund contributions incurred as of the
2 date of entry of judgment in this action, if any;

3 B. For attorney's fees according to proof;

4 C. For liquidated damages totaling \$7,332.43, which is twenty percent (20%) of both:
5 (a) the delinquent and still unpaid contributions from November 2009 through March 2010 as well
6 as (b) the delinquent but eventually paid contributions for September 2009 and October 2009.
7 Defendant is also responsible for any other liquidated damages that have accrued since April 16,
8 2010;

9 D. For interest totaling \$1,157.99, which was calculated at the rate of twelve percent
10 (12%) per annum, commencing from the tenth (10th) day of the month in which the contribution
11 became delinquent and thereafter for: (a) the delinquent and still unpaid contributions from
12 November 2009 through March 2010; (b) the delinquent but eventually paid contributions for
13 September 2009 and October 2009; and (c) liquidated damages. Defendant is also responsible for
14 any other interest that has accrued since April 16, 2010;

15 E. For an order compelling Piedmont Lumber to perform and continue performing its
16 obligations under the Trust Agreement and the CBA;

17 F. For an order compelling Piedmont Lumber to submit to an audit by the Plan, at
18 Piedmont Lumber's expense, to determine the extent of Piedmont Lumber's delinquency and
19 ability to make contributions;

20 G. For the costs of suit; and

21 H. For such other relief as the Court deems proper.

22 DATED: April 23, 2010

23 TRUCKER ♦ HUSS

24 By: 

25 Michelle L. Schuller
26 Attorneys for Plaintiff
27 BOARD OF TRUSTEES OF THE CLERKS
28 AND LUMBER HANDLERS PENSION FUND